

Subject: RE: Curling v. Raffensperger, No. 1:17-cv-02989-AT - CCBOER Supplemental Response to Plaintiffs' Subpoenas to Testify and Subpoena for the Production of Documents

Date: Wednesday, September 28, 2022 at 2:25:53 PM Eastern Daylight Time

From: Jennifer Dorminey Herzog

To: Ascarrunz, Veronica, Marilyn Marks, Cross, David D., Conaway, Jenna B., Bruce Brown, Kaiser, Mary, Adam M. Sparks, Russ Abney, ram@lawram.com, Cichter@ichterdavis.com, Jill Connors, Middleton, Caroline L., Halsey G. Knapp, Jr., Daniella P. Stucchi, btyson@taylorenghish.com, jballi@taylorenghish.com, dburton@taylorenghish.com, dlaross@taylorenghish.com, lparadise@taylorenghish.com, bjacoutot@taylorenghish.com, jcrumly@taylorenghish.com, cmiller@robbinsfirm.com, vrusso@robbinsfirm.com, adenton@robbinsfirm.com, jbelinfante@robbinsfirm.com, cheryl.ringer@fultoncountyga.gov, kaye.burwell@fultoncountyga.gov, david.lowman@fultoncountyga.gov, Jene.Gipson@fultoncountyga.gov, greg@hnhwlaw.com, David Cross, Jill Connors

CC: Stephen Delk, Anthony A. Rowell, Nick Kinsley, Vickers, Wesley

Attachments: HBS_Email_Signature_1.19.22.jpg, image001.jpg, 20190711 CGG Doc. 477 PROTECTIVE ORDER .pdf

Good afternoon everyone,

In follow up to receipt of emails from Bruce Brown on the subject of production of certain portions of the 4th video (advanced voting room): It will take significant time and expense to review the video for delineating what portions should be designated confidential. We do not have staff to designate to that sole purpose at this time. With counsel's understanding that we expect certain portions of this video to include voters in the act of voting, our proposal is to produce the 4th video in its entirety with an "Attorneys Eyes Only" designation as set out in the attached Order. If there is a portion of the video you later desire to use which does not contain early voting and does not otherwise warrant the "Attorneys Eyes Only" or "Confidential" designations, we will then upon your request discuss un-designating that specific portion at that later date. If this is agreeable, I have requested IT make the necessary copies saved to hard drives and we expect those will be available for in-person pick up at the Coffee County Board of Commissioner's office located at 101 Peterson Ave S, Douglas, GA 31533 (in the Coffee County Courthouse) tomorrow September 29, 2022 after 12:00 noon. There will be 1 copy for Curling, 1 for CGG, and 1 for SOS. Please ask the front desk to see County Clerk Tracie Vickers upon arrival. In follow up to receipt of emails from David Cross on the subject of replacement of "all" the elections equipment in Coffee County: As I believe everyone is aware, technicians from the Secretary of State Elections Division came to the Coffee County Board of Elections and Registration office on Monday 9/26/22 to deliver/replace certain elections equipment. The equipment replaced was determined by the SOS (in communication with Coffee County) and L&A testing already previously advertised to begin Tuesday 9/27. David Cross sent an email late Friday night expressing consternation over the server and ICC scanner not also being replaced, and a follow up email late Monday evening which was received Tuesday morning indicating Judge Totenberg's suggestion to the SOS during the hearing Monday "that replacing the EMS server and ICC seemed like the right thing to do" and "encouraged SOS to reconsider their decision not to." I am not aware that the SOS has changed its position on this issue or that an Order has been entered with regard to same, but please advise if so. Lastly, please provide a copy of the transcript from the SOS designee deposition which I believe occurred on or around August 31, 2022.

Thanks,

Jennifer

Jennifer Dorminey Herzog

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From: Jennifer Dorminey Herzog <jherzog@hallboothsmith.com>

Sent: Friday, September 16, 2022 2:09 PM

To: Ascarrunz, Veronica <VAscarrunz@mofo.com>; Marilyn Marks <Marilyn@USCGG.org>; Cross, David D. <DCross@mofo.com>; Conaway, Jenna B. <JConaway@mofo.com>; Bruce Brown <bbrown@brucepbrownlaw.com>; Kaiser, Mary <MKaiser@mofo.com>; Adam M. Sparks <sparks@khlawfirm.com>; Russ Abney <rabney@wattsguerra.com>; ram@lawram.com; Cichter@ichterdavis.com; Jill Connors <JConnors@ichterdavis.com>; Middleton, Caroline L. <CMiddleton@mofo.com>; Halsey G. Knapp, Jr. <hknapp@khlawfirm.com>; Daniella P. Stucchi <daniella@khlawfirm.com>; btyson@taylorenghish.com; jballi@taylorenghish.com; dburton@taylorenghish.com; dlaross@taylorenghish.com; lparadise@taylorenghish.com; bjacoutot@taylorenghish.com; jcrumly@taylorenghish.com; cmiller@robbinsfirm.com; vrusso@robbinsfirm.com; adenton@robbinsfirm.com; jbelinfante@robbinsfirm.com; cheryl.ringer@fultoncountyga.gov; kaye.burwell@fultoncountyga.gov; david.lowman@fultoncountyga.gov; Jene.Gipson@fultoncountyga.gov; greg@hmhwlaw.com; David Cross <Dcross108@protonmail.com>; Jill Connors <jconnors@ichterdavis.com>

Cc: Stephen Delk <SDelk@hallboothsmith.com>; Anthony A. Rowell <ARowell@hallboothsmith.com>; Nick Kinsley <NKinsley@hallboothsmith.com>; Vickers, Wesley <Wesley.Vickers@coffeecounty-ga.gov>

Subject: RE: Curling v. Raffensperger, No. 1:17-cv-02989-AT - CBOER Supplemental Response to Plaintiffs' Subpoenas to Testify and Subpoena for the Production of Documents

Good afternoon,

Please find below Coffee County Board of Election and Registration's supplementation to its prior responses to Coalition of Good Governance and Curling subpoenas (in addition to Bruce Brown's email below, I also endeavor to address additional issues outlined in emails sent by David Cross and Marilyn Marks recently).

1. Confirming that I did (again) request and it is my understanding that current Board members (those now being Earnestine Thomas Clark, Andy Thomas, Wendell Stone and Mathew McCullough) have in fact conducted reasonable searches of their devices for all correspondence and documents concerning the topics identified in the subpoenas - per our agreement, we have not produced any documents that were previously produced to Ms. Marks in response to Open Records Requests.

2. I have confirmed the Coffee County Board of Commissioners did not have a meeting or Executive Session on February 25, 2021 – the only meeting was the Coffee County Board of Elections and Registration. (although I recognize confusing from the text message you reference, the Board of Commissioners website, in addition to posting notice of its own meetings, posts notice of other Board meetings, including the Board of Elections and Registration.) I have attached the following documents:
 - a. Board of Elections Notice of Called Meeting on November 12, @ 12:30 p.m. and minutes.
 - b. Board of Elections Notice of Called Meeting February 25, 2021 @ 1:30 p.m. and agenda. (no minutes located as a result of election supervisor is the person to normally take the minutes. Board has drafted minutes and those can be provided to you after formal approval at the Board's next meeting on 10/4/22.)
 - c. Executive Session minutes of any meetings are not included as Georgia's Open Meetings Act says "such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session." O.C.G.A. § 50-14-1(e)(2)(C).
3. Please find in link below a copy of lawsuits filed against the Coffee County Board Elections and Registration and/or the county election supervisor from Nov. 3, 2020, through the present, along with a notice of preservation. Although I do not believe your request was broad enough or intended to cover attorney client communications or attorney client work product, in an abundance of caution in the event you so intended, we object to the production of those under the authority of O.C.G.A. 50-18-72(a)(41) and (42).

<https://www.dropbox.com/sh/s0pczhzkvhi88le/AADYiomEOFu2qLhi3DfCqz0xa?dl=0>

4. I have not been provided any documents transmitting decisions/recommendations of the Board of Commissioners to the Board of Elections related to the topics of threatened litigation or Hampton's termination so have no documents to produce responsive to this request.
5. Please find in link below supplementation of attachments to emails previously provided (# of email written on top of each) provided here:

[**Curling - CCBOE Docs Responsive to Subpoenas - Email Attachments.PDF**](#)

6. Additional Video – I recognize I have previously represented to you that the front door security video previously produced was all that was in existence which was based on my honest understanding at the time the representation was made. However, through further diligence IT recently located additional responsive video footage which is provided in the link below. This link is also being produced to the GBI today. It is my understanding that this link contains video footage from 3 cameras during the period of 11/15/2020 – 2/26/2021 from inside the Coffee County Board of Elections and Registration's office. There is an additional 4th camera that is not included in this link as it appears to have been angled in a way that it may include activities during advanced voting - this 4th video will be produced only upon a protective order from the court for in camera inspection. I have also included directions below provided to me by IT as to how to access the link. We will not be able to have a courier deliver a copy to Atlanta as requested today, but you are welcome to have someone retrieve a copy from the Coffee County Board of Commissioners office in Douglas, Georgia this afternoon before close of business at 5:00pm. Also, we are willing to overnight one copy of a hard drive to a location of Plaintiff's counsel's choice this afternoon if notified on or before 3:30pm (it is my understanding because of the size it takes numerous hours to make an additional copy).

 [Elections Cams nov15 0_00 - feb26 11_59](#)

1. Click the link
2. Click the round radio button to the left of the file and then click download button in top left corner
3. Open the downloaded file
4. Double click the smartclient-player.exe
5. Questions on how to use it the software google milestone xprotect client.

Thank you,

Jennifer Herzog

From: "bbrown@brucepbrownlaw.com" <bbrown@brucepbrownlaw.com>

Date: Thursday, September 8, 2022 at 12:44 PM

To: Jennifer Dorminey Herzog <jherzog@hallboothsmith.com>

Cc: Coalition for Good Governance <Marilyn@USCGG.org>, "Cross, David D." <DCross@mofo.com>, "Conaway, Jenna B." <JConaway@mofo.com>

Subject: Curling v. Raffensperger - Coffee County BOE Subpoena for Documents

Jennifer,

I'm writing to request your clients' complete and immediate compliance with the document subpoenas issued by Coalition Plaintiffs for any documents relating to the access to "Coffee County's Election System, EMS Servers and Election Data," the persons involved in such access, what devices were accessed, any communications relating to such access, and Misty Hampton's termination. (See, e.g. Subpoena, Paragraphs 4, 6, 9, 11, 14, 15, 26 and 44).

As explained in greater detail below, though other documents may be missing from Coffee County BOE's production, this request is focused on the following three categories of documents: (a) documents reflecting or relating to pending or threatened litigation that were the subject matter of communications between the Commissioners on February 24, 2021, or the special meeting of the Board of Commissions on February 25, 2021 (the same day Misty Hampton was terminated); (b) text message exchanges or other written communications among board members and (c) video surveillance records that exist for the election office area for the period November 1, 2020 through June 30, 2021, including interior office and exterior video records.

a. Threatened litigation and Hampton's employment termination

Please see the text message attached between Ms. Hampton and the Board of Elections on February 24, 2021. (It was introduced as Exhibit 15 in the county's 30(b)(6) deposition.) Ms. McCullough

references a “new lawsuit” and another possible lawsuit. He goes on to say that Tony (presumably Tony Rowell) was notified of the threatened or pending litigation. Plaintiffs have received no documents from you referencing this threatened or pending litigation.

In text messages exchanged between Ms. Hampton and Mr. Chaney February 24 at 10:53 pm (Exhibit 14), Hampton notes that there is a special called meeting of the Board of Commissioners for February 25, 2021, and screen shots the agenda related to potential litigation and employment-related issues. Hampton raises the question of the need for a resignation letter. Given that February 25 was the date of Ms. Hampton’s termination, the subject of the meeting was Ms. Hampton and Ms. Ridlehoover’s employment and we are entitled to discovery to determine whether the potential litigation relates to the unauthorized access to the voting system. The meeting agenda seems to have been since removed from the county’s website.

Please provide all responsive documents, including materials from the Board of Commissioner’s Executive Session and documents related to decisions made during the Executive Session or public portion of the meeting that presumably followed.

Please produce all documents, including communications, transmitting any decisions or recommendations of the Board of County Commissioners to the Board of Elections and Registration related to the topics of such threatened litigation or Hampton’s termination.

Also please provide any non-privileged documents and communications related to then-pending or threatened litigation referenced in the February 24 communications of the Board of Elections members, including communications from third parties. Coalition Plaintiffs request that your office immediately produce such documents. If any are withheld because of a claim of privilege, please provide an appropriate log.

b. *.BOER’s communications*

Your clients did not produce the highly relevant responsive records of text message exchanges among board members on Exhibit 15 on the topic of threatened litigation. Especially relevant is the fact that decisions of the Board of Elections and Registration were being made by an unnoticed electronic meeting, yet the communications were not produced. Please immediately remedy all failures to produce these and other responsive documents.

c. *Video Records*

Your clients’ late production of relevant emails and security video only after being asked numerous times prejudiced Plaintiffs’ ability to research the facts and conduct other timely discovery. Please produce **all** responsive documents immediately, including additional video surveillance records for the election office area for the period November 1, 2020 through June 30, 2021, including interior office and exterior video records. All interior office video recordings referenced or reviewed in the consideration of Ms. Hampton’s discipline or termination would have been preserved as were the

exterior door videos. Such videos may also include the capture of unauthorized access of the voting system.

Please note that late emails produced include an Open Records Request by Ms. Hampton for *all* election office video through February 25, 2021. The video finally produced to Plaintiffs, however, ended on February 19, 2021. There is no indication in the correspondence between the County and Ms. Hampton that all video requested was not produced for the dates requested by Ms. Hampton. Please thoroughly search the files of the Board of Elections, Coffee County government, and third party vendors or agents for all videos (interior and exterior) of the election office during the time frame. Such videos may include evidence of activity related to unauthorized access of equipment, including EMS password changes (Subpoena Paragraph 26), and replacement of the EMS server. It is imperative that county management, the public records officer, attorneys, and vendors do a thorough search of all video files for this footage and that you produce such records promptly.

Jennifer, we appreciate your work on this in the past, but do need your clients' full compliance immediately.

Thanks,
Bruce

Jennifer Dorminey Herzog

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